

BEFORE THE
GOVERNING BOARD
COMPTON UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Certificated Employees of the Compton
Unified School District,

Respondent.

OAH Case No. 2012030749

PROPOSED DECISION

David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, heard this matter on May 3, 4 and 7, 2012, in Compton, California. Adam J. Fiss, Michelle Holmes and Maggy Athanasious, of Littler Mendelson, P.C., represented complainant Alejandro M. Flores (Flores), Assistant Superintendent Human Resources, Compton Unified School District (District). Michael R. Feinberg and Gening Liao, of Schwartz, Steinsapir, Dohrmann & Sommers LLP, represented respondents, whose names appear on Attachment A.

The hearing in this matter was initially scheduled for April 16 - 19, 2012. The parties thereafter submitted a stipulation and order (Exhibit 7) to continue the hearing, thereby extending the deadlines set forth in applicable Education Code¹ sections such that this Proposed Decision shall be submitted to respondents and the governing board of the District by May 18, 2012, and the governing board may have until May 29, 2012, to provide final notices to employees that their services will not be required for the ensuing year. (§ 44949, subd. (e).)

Evidence was received and argument was made at the hearing, and the matter was submitted for decision on May 7, 2012.

FACTUAL FINDINGS

1. Assistant Superintendent Flores filed the Accusations and the Amended Accusation in his official capacity.
2. Respondents are certificated employees of the District.

¹ All further statutory references are to the Education Code except where indicated.

3.A. On March 13, 2012, the Board of Trustees (Board) of the District adopted resolution number 11/12-25, entitled “Reduction or Elimination of Particular Kinds of Services.” (Reduction Resolution; Exhibit 1.) The purpose of the Reduction Resolution was to reduce or discontinue particular kinds of certificated services no later than the beginning of the 2012-2013 school year. Specifically, the resolution requires the reduction of 170 “FTE” - Full Time Equivalent positions - by reducing various types of services. The FTE’s that the Board determined to reduce are described in the Reduction Resolution, as follows:

<u>PARTICULAR KIND OF SERVICE</u>	<u>NUMBER OF FTE POSITIONS</u>
Non-Special Education K-6th Grade Teacher	24
BTSA Specialist	1
Categorical Specialist	14
Categorical Program Specialist	1
Counselor – Elementary	6
Counselor – Middle/High	8
Demonstration Teacher	8
English Language Arts Specialist	17
English Language Arts/English Learner Specialist	4
English Language Arts/Math Specialist	1
English Learner Specialist	22
GATE Specialist	1
Instructional Data Specialist	1
Mathematics Specialist	8
Outreach Consultant	2
PAR Consulting Teacher	1
Program Specialist – Non-Special Education	2
Program Specialist – Special Education	8
RSP Resource Teacher	1
SPE Transition Specialist	1
Student Support Specialist	7
Student Support Specialist	
Intervention and Co-Curricular Program	1
Secondary (7 th -12 th Grade) English Teacher	10
Secondary (7 th -12 th Grade) Life Science Teacher	5
Secondary (7 th -12 th Grade) Physical Science Teacher	5
Secondary (7 th -12 th Grade) Math Teacher	10
Secondary (7 th -12 th Grade) Social Science Teacher	10
VAPA Specialist	1

3.B. Before the beginning of the hearing, the District was able to rescind the preliminary notices (described in more detail in Factual Finding 8.A) and withdraw the Amended Accusation against numerous respondents, thereby modifying the number of FTE’s

reduced or eliminated from 170 to 81. The revised list of FTE positions is found in Exhibit 11.

4. The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under section 44955.

5. The decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District's discretion given uncertainty regarding the state budget and the District's financial resources.

6. The reduction and discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Board.

7. On March 13, 2012, the Board adopted resolution number 11/12-26, for "Establishment of Criteria for Order of Layoff and Reemployment Following Layoff for Employees with Equal Seniority." (Tie-break Resolution; Exhibit 2.) The resolution established tie-breaking criteria for use in the event that two or more teachers facing layoff had the same seniority date. The District did not abuse its discretion in the adoption of the Tie-break Resolution.

8.A. On or before March 15, 2012, each respondent was given written notice that pursuant to sections 44949 and 44955, their services would not be required in the 2012-2013 school year (hereafter the preliminary notices). Thereafter, respondents requested a hearing and, except as noted below, each was served with an Accusation. Each respondent filed a notice of defense. The Amended Accusation was served on respondents' attorney, who submitted a Joint Notice of Defense, described in more detail below.

8.B. The District served the preliminary notice on respondent Aundrea Farley at her address of record. Soon thereafter Ms. Farley notified the District she had changed her address. Later, the District attempted to serve the Accusation by mailing it to Ms. Farley's old address. One day later it mailed Ms. Farley's paycheck to her new address. Ms. Farley learned of the Accusation and first viewed it at the District's office after the time had expired for her to respond to it by submitting a Notice of Defense. Mr. Feinberg submitted a Joint Notice of Defense for respondents, including Ms. Farley (Exhibit 7), which specifically notes that it is without prejudice to the right to contend that the District failed to properly serve the Accusation. Ms. Farley testified at the hearing.

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8.C. The District sent preliminary notices to three other employees who did not request a hearing: Decondia Ferguson, Jonathan Moss and Rhonda Robinson-Batiste. The parties agree that Rhonda Robinson-Batiste may participate in this matter as a respondent. Although there was a contention that no preliminary notice was served on Chantal Richmond, the District later rescinded her preliminary notice and withdrew the Amended Accusation against her.

9. The District was able to withdraw or rescind a number of the preliminary notices and accusations in the days leading up to the hearing and during the hearing. During the hearing the District rescinded the preliminary notices and withdrew the Amended Accusation with respect to the following respondents: Chantal Richmond, LaShawn Oppong, Tonika Haywood, Jeannice Turner, Ariana Cervantes-Horvath (as to 5/6 of an FTE), Edward Boynton, Ararath Iriarte (as to 3/6 of an FTE), and Christina Gudino (as to 3/6 of an FTE).

10. In the course of the layoff process, the District created a seniority list. That seniority list took into account a number of factors, the primary factor being each certificated employee's first date of paid service. However, other factors, such as credential types, current assignment, and information that would be pertinent to any tie-breaking was set forth on the seniority list.

11. The District reviewed its records and the seniority list to determine which employees might displace or "bump" other employees, because they held credentials in another area and were entitled to displace a more junior employee. Ultimately some senior employees bumped other more junior employees. This information was included in the seniority lists received in evidence as Exhibits 8, 9 and 21.

12. The District determined that certain junior teachers possessed special training and experience necessary to teach a specific course which more senior teachers did not possess, which would allow the more junior teachers to be retained or "skipped." The course of study identified for purposes of skipping is described in the Reduction Resolution as: "High School Reading Intervention Teacher (Read 180)."

13. No certificated employee junior to any respondent was retained by the District to render a service for which a respondent was certificated and qualified to render.

14. Respondents raised numerous contentions during the hearing, some of which are summarized as follows: failure to serve the Amended Accusation resulting in a lack of jurisdiction; failure to properly apply the Tie-break Resolution; the skip of high school reading intervention teachers did not properly consider that a middle school reading intervention teacher was certificated and competent to also provide that service and has more seniority than the three teachers who were skipped; and that several employees were improperly bumped, including the contentions that (1) the bumping process resulted in teachers being retained to

perform services at multiple school sites, which was not practical or possible, (2) the District did not test for competency the employees that it proposed to bump into positions that would be a new assignment for them, and (3) the District did not prove that the more senior teachers doing the bumping were trained to perform the positions held by the more junior teachers. Some additional findings related to these contentions are set forth below.

15.A. The District retained three teachers with potentially less seniority, or “skipped” them, to teach high school reading intervention (Read 180), as noted in Factual Finding 12. More specifically, skipping was done to retain Marian Brashears (seniority date 10/6/08), Regis Inge (seniority date 8/25/08), and Mona Walker (seniority date 9/9/08). Respondent Tracie Coleman-Wilson (seniority date 8/25/08) is a middle school reading intervention teacher and demonstration teacher who contends that she is certificated and competent to teach high school reading intervention (Read 180) and should be retained.

15.B. The District established that it has made a substantial investment of time and money in instituting and maintaining the reading intervention classes, which is an elective in the high school and can be used as an assigned English course in the middle school. The classes make use of the Read 180 program, which includes computer software, testing and reading materials, a system for gathering and analyzing data on students’ progress, and frequent in-class observation and consultation by representatives of the company, Scholastic, that supplies the materials. In the future, the District intends to continue the high school classes but will leave it to each middle school whether the classes will be offered.

15.C. Based on the testimony and documents submitted concerning Coleman-Wilson’s capabilities, it is clear that she is very qualified to perform her position as a middle school reading intervention teacher, including the additional duties she has as a demonstration teacher. It was also established that, in addition to her Multiple Subject teaching credential, Coleman-Wilson holds a Clear Reading Certification, of which the District was aware but did not list where appropriate on the seniority list. Any failure of the District to properly consider this Certification in applying the Tie-break Resolution to five other teachers with the same seniority as Coleman-Wilson had no effect on the order of layoff, as all were laid off except for one who consented to reassignment. More specifically, Coleman-Wilson and four others were sent preliminary notices and had not consented to assignment to an alternative school, whereas the remaining teacher in the tie, Sean Munley, accepted the assignment and was therefore able to be retained by the District. Such consent and reassignment is proper under section 44865.

15.D. The District established that Brashears, Inge and Walker had special training and experience necessary to teach high school reading intervention (Read 180) that Coleman-Walker did not possess. For example, although middle and high school reading intervention teachers receive much of the same training, there is also separate training for the high school teachers. Although students in the middle and high school reading intervention classes may be at the same reading level, the materials used in the classes are age appropriate, so a high school

reading intervention student at a given reading level will be using different materials than a middle school student at the same reading level. The middle school reading intervention classes may include students at reading levels from grade level 1.5 through 8.0, while the high school reading intervention classes may include students at reading levels as high as grade level 12. High school reading intervention teachers receive more sessions per year of observation and consultation from Scholastic representatives. The emphasis in the high school classes is more geared to high school requirements, such as the high school exit exam and the types of essays written by high school students. Finally, students in high school reading intervention classes are older, and often have been struggling with reading, comprehension and writing for a longer time than middle school students, requiring added skill and sensitivity on the part of the teacher. The District is particularly aware that the high school classes are the last opportunity it will have to address and hopefully improve the literacy of these students.

15.E. Respondents also contend that there was no individualized assessment of Brashears', Inge's, Walker's or Coleman-Wilson's competence to teach the high school reading intervention class. This contention is not convincing, for two reasons. First, even if such an individualized assessment is not initially performed before a school district sends out preliminary notices, it can take place in the form of a request for hearing and the presentation of evidence at a hearing, as well as inclusion in the proposed decision and consideration by the governing board before a decision is made to issue final notices. (*Bledsoe v. Biggs unified School Dist.* (2009) 170 Cal.App.4th 127, 142-143 (*Bledsoe*)). Therefore, this hearing, this Proposed Decision, and subsequent consideration by the Board will satisfy the requirement. Second, as set forth in Factual Findings 15.A, B, C and D, the District determined that the three skipped teachers possess special skill and experience that Coleman-Wilson does not possess. To reach this conclusion, the District had to consider, or individually assess, each teacher's competence to teach the high school reading intervention class, particularly that the skipped teachers have been in that position and have gained the necessary training and experience. It should be noted that *Bledsoe* reviews a school district's assessment of the competence of only the more senior teacher being skipped over who raised objection to the process, here Coleman-Wilson, and not the competence of the teachers doing the skipping.

15.F. To be sure, it is likely that, if given the assignment, Coleman-Wilson would be successful as a high school reading intervention teacher. However, she does not possess the special training and experience to bump into the position.

16. Respondents contend that demonstration teachers, who teach other teachers, provide valuable services that are critical to the success of students, and their positions should not be eliminated. Similarly, respondents contend that the majority of teachers assigned to Community Day School have received preliminary notices and that their experience and capabilities are valuable. The principal has supported the retention of several respondents. Respondents also contend that there are several instances wherein the District has permitted a teacher to teach an extra duty assignment and that, if these extras are consolidated, some

teaching positions could be retained. The District established that extra duty assignments are very ad hoc; they are approved only when the need is established and last only for the semester when the need is shown, and are authorized and terminated under section 44923. Each of these contentions by respondents are rejected, as the District has the authority to make assignments as well as determine the necessity for reducing particular kinds of services, and it was not demonstrated that the District did so in an arbitrary or unlawful manner.

17. Respondents contend that the District acted improperly in the manner in which it determined if teachers who would otherwise have been subject to layoff were offered assignments in the alternative school. This contention is rejected. The District allowed such teachers to be reassigned under the authority of section 44865. Under *Bledsoe, supra*, 170 Cal.App.4th at 136-137, it was determined that a school district is required to undertake this process to determine if any teacher who would otherwise be laid off possesses the seniority and qualifications that would entitle him to be assigned to another position.

18.A. Numerous respondents testified to the effect that the District permitted improper bumping as to them, including that the teachers who would bump them were not qualified to teach in their positions. Among those respondents offering supporting testimony were Christopher Ciampa, Dan Amosa, Shannon Tagger, Niccolo Rosselli, Brent Walmsley, Mandy Jepsen and Tammy Sue Winchell. Many of these teachers presented evidence of the valuable services they provide and capabilities they bring to their students. However, none established that the bumping process was performed incorrectly by the District. Respondents contend that, before the District may make many the reassignments contemplated by the bumping the District must require the teacher to pass a subject matter competency test. While it is true that this is required under section 44955, subdivision (c), such testing is required at the stage that the District makes assignments or reassignments, which is later in this school year or early in the next school year. It is not necessary for such testing to take place as part of the layoff process. Rather, the statutes related to the layoff process--largely sections 44949 and 44955--are premised predominantly upon the right of senior teachers to retain employment over more junior teachers.

18.B. Respondents raise the same concern--that they teach in positions and are being bumped by more senior teachers who may not have experience in those positions--with respect not only to alternate education but also, among others, AVID classes (Advancement Via Individual Determination) and middle school reading intervention. This contention is not convincing and is rejected.

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19. Respondents contend that the District has not properly considered the attrition presented by the resignation of Mr. Koopmans, accepted by the Board after March 15, 2012. In a layoff based on the reduction or elimination of particular kinds of services, it is not necessary for a school district to consider attrition occurring after March 15, the last day on which preliminary notices may be served. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627.)

20. In closing argument, respondents contend that the bumping process is “a shell game” because there are several instances wherein a single teacher bumps several others for portions of the school day, measured in one-sixth increments because there are six periods of instruction in many of the schools. Further, several of these bumps result in a single teacher bumping multiple teachers in incremental positions at as many as four different school sites. Respondents argue that it is impractical and, likely, impossible for the teacher doing the bumping to actually teach those assignments. However, as noted above (Factual Finding 18.A) and in the Legal Conclusions below, the statutes related to the layoff process are premised predominantly upon the right of senior teachers to retain employment over more junior teachers. Placing that statutory imperative into practice can result in exactly the type of incremental analysis used by the District. As the District established that it did so properly, the results are appropriate.

21. Respondents raised other contentions in their evidence and argument. Except as specifically set forth herein, these contentions were not supported by sufficient evidence or the law and, therefore, are not convincing and are rejected.

LEGAL CONCLUSIONS

1. The teacher layoff process, also referred to as a reduction in force, relies largely on sections 44949 and 44955, portions of which will be quoted as they relate to the different issues raised herein. As to the preliminary notices, section 44949, subdivision (a), states in pertinent part:

“No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefor.”

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2. Rights to a hearing and treatment of certain errors are covered in section 44949, subdivision (c)(3), which states in pertinent part:

“The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils thereof. . . . Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors.”

3. As relevant here, section 44955, subdivisions (b) and (c), allow a school district to reduce or discontinue particular kinds of services, establish seniority as a predominant factor, allow for bumping and skipping, and provide for tie-breaking. They provide in pertinent part:

“(b) Whenever . . . a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, . . . and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

“As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. . . .

“(c) . . . [S]ervices of such employees shall be shall be terminated in the reverse order in which they were employed, as determined by the board in accordance with Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

“The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. . . .”

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4. Section 44955, subdivision (d), provides additional requirements when a district proposes to skip teachers from the layoff process. It states in pertinent part:

“Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

“(1) The district demonstrates a specific need for personnel to teach a specific course or course of study . . . , and that the certificated employee has special training and experience necessary to teach that course or course of study . . . , which others with more seniority do not possess.”

5. It is undisputed that the District failed to timely serve the Accusation on Ms. Farley. Section 44949, subdivision (c), requires that reduction in force proceedings be conducted pursuant to the formal hearing procedures of the Administrative Procedure Act, Government Code section 11500 et seq. Government Code section 11505 requires a respondent to be served with the pertinent documents and provides that “[n]o order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent shall have been served personally or by registered mail as provided herein, or shall have filed a notice of defense or otherwise appeared.” As noted above, Farley appeared at the hearing and gave testimony. Her testimony did not include any claim that, as a result of the failure to be properly served with the Accusation, she was unable to or prevented from providing relevant evidence or otherwise participate in the hearing. She was included as a party represented by Mr. Feinberg when the Joint Notice of Defense was served. Admittedly, that Joint Notice of Defense preserves the right to raise objections for failure to properly serve the Accusation. However, Government Code section 11505 would not apply. Farley’s counsel was able to represent her interests and Farley appeared at the hearing. Rather, under the circumstances, the failure to serve Farley is considered a nonsubstantive procedural error that did not result in any prejudice under section 44949, subdivision (c)(3), and is not a basis to dismiss the charges against Farley.

6. Sections 44949 and 44955 establish jurisdiction for this proceeding. The notice and jurisdictional requirements set forth in sections 44949 and 44945 were met, as set forth in Factual Findings 1 through 8.

7. A school district may reduce services within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

8. The District must be solvent to provide educational services, and cost savings are necessary to resolve projected budget reductions, to insure that its schools provide, and students receive, required instruction in an effective and efficient manner. Such financial circumstances can dictate a reduction in certificated staff, and “section 44955 is the only statutory authority available to school districts to effectuate that reduction.” (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 639.) The Board’s decision to reduce services in light of its budget addresses the welfare of students, and was a proper exercise of the District’s discretion. Respondents did not establish that the proposed reductions in services would violate any statutory or regulatory requirement governing the District.

9. Boards of education hold significant discretion in determining the need to reduce or discontinue particular kinds of services, which is not open to second-guessing in this proceeding. (*Rutherford v. Board of Trustees, supra*, 64 Cal.App.3d 167.) Such policy-making decisions are not subject to arguments as to the wisdom of their enactment, their necessity, or the motivations for the decisions. (*California Teachers Assn. v. Huff* (1992) 5 Cal.App.4th 1513, 1529.) Such decisions and action must be reasonable under the circumstances, with the understanding that “such a standard may permit a difference of opinion.” (*Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) Numerous cases stand for the proposition that the process of implementing layoffs is a very flexible one and that school districts retain great flexibility in carrying out the process. (See, for example, *Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796, and *Zalec v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838.)

10. The services to be discontinued are particular kinds of services within the meaning of section 44955. The Board’s decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District’s schools and pupils within the meaning of section 44949. This Conclusion is based on Factual Findings 2 through 6, and the foregoing authorities.

11. Cause exists under sections 44949 and 44955 for the reduction of the particular kinds of service set forth in the Reduction Resolution and Factual Finding 3.A, which cause relates solely to the welfare of the District’s schools and pupils, by reason of Factual Findings 2 through 6.

12.A. The statutory authority for bumping, section 44955, subdivision (b), is quoted in Conclusion 3 above. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) Fairly often, as here, bumping relies upon the more senior teacher using a credential that authorizes him or her to teach in the continuing position. For example, if a physical education teacher has credentials to teach

physical education and history, and her physical education position is being eliminated, based on her seniority she may be assigned to teach history classes. On occasion, the school district must also consider whether the senior teacher's consent is needed in able to assign that teacher to the continuing position. (See section 44865 and Factual Findings 11, 17 and 18.)

12.B. Section 44955, subdivision (b), requires analysis of whether the more senior teacher is being retained "to render a service which said permanent employee is *certificated and competent* to render." (Emphasis added.) "Certificated" is defined by the provisions of the Education Code pertaining to credentials, but "competent" is not specifically defined. In *Forker v. Board of Trustees* (1994) 160 Cal.App.3d 13, 19, the Court defined the term in a reemployment proceeding under section 44956, in terms of the teachers' skills and qualifications, specifically as "relating to special qualifications for a vacant position, rather than relating to the on-the-job performance of the laid-off permanent employee." In doing so, the Court noted that other courts had interpreted the term in a similar manner in reduction in force cases, namely *Brough v. Governing Board* (1981) 118 Cal.App.3d 702, 714-15, and *Moreland Teachers Association v. Kurze* (1980) 109 Cal.App.3d 648, 654-55. Once a teacher is found to be competent, the statutory directive is met, and a school district may not change the focus of the inquiry to determine the *most* competent teacher, nor may teachers force a school district to do so. As stated in *Martin v. Kentfield School Dist.* (1983) 35 Cal.3d. 294, 299: "Among the employees who met this threshold limitation [of being 'certificated and competent'], there is not room in the statutory scheme for comparative evaluation. Thus, . . . which of the two employees under consideration . . . was 'better' qualified for the job is not the question here, nor was it properly the question before the board."

12.C. The process of determining what services will be affected in a layoff proceeding and how bumping is implemented is complicated. In examining whether it has been done correctly one must consider the various stages of the layoff process and the state of affairs in a school district during those stages. School districts gather information and plan for implementing the layoff well in advance of March 15, the date by which the school board must take action and the school district must send out preliminary notices to the potentially affected teachers. The process continues, and some teachers receiving layoff notices may have those notices rescinded and the Accusations withdrawn. There is an administrative hearing, board action on the Proposed Decision, and the sending of final layoff notices by May 15. Time goes on, and it is often the case that, due to additional budget determinations or other factors, some positions can be saved and some teachers who were laid off are later rehired by the school district. And the school district will, at some point, make actual determinations of which teacher will be assigned to which position(s). In many ways, the process of bumping during the early stages of the layoff process is a theoretical construct, determining how a more senior teacher may be retained based upon being certificated and competent to render a service, as required by the statute, and not a blueprint for how the school district will actually make later assignments, when it is better informed of the needs it must address and the assets it has to address them.

12.D. Respondents did not establish that the District incorrectly analyzed the certification and competence of the teachers it determined could bump into continuing positions, for the reasons set forth in Factual Findings 10, 11, 13, 14, 16, 17, 18 and 20.

13.A. Junior teachers may be given retention priority over senior teachers—may “skip” that senior employee—if the junior teacher possesses the special training and experience that is necessary but is not possessed by their more senior colleagues. (Section 44955, subdivisions (b) and (d)(1), quoted in Conclusions 3 and 4 above; *Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393 v. Governing Bd. of Santa Clara Unified School Dist.* (1981) 116 Cal.App.3d 831.)

13.B. The contention of some respondents that their special training, experience and skills should cause the District to skip them in this proceeding is not supported by law. Skipping is a process under the statutes wherein a school district may choose to demonstrate a specific need and that an employee has the special training and experience to meet that need. However, the statute does not require a school district to do so. Rather, it is within the school district’s discretion to determine if it wishes the layoff process to skip over an employee. The District adequately described the special skills and training upon which it relied. As applied here, other respondents cannot force the District to skip them. Further, respondents have not established that the District improperly skipped Brashears, Inge and Walker. See Factual Findings 10, 12, 13, 14, 15 and 16.

14. No respondent established that they had the right to bump a junior employee or that they should have been skipped, based on Conclusions 12 and 13 and the underlying Factual Findings.

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15. No junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render.

16. The District may lay off the respondents, in reverse order of seniority, in order to reduce services, based on all the foregoing. Where the District has rescinded preliminary notices and withdrawn the Accusation and Amended Accusation, the affected teachers are no longer respondents, except where the rescission and withdrawal affects less than a full time equivalent position.

ORDER

1. The Accusations and Amended Accusation are sustained.

2. Notice shall be given to respondents in reverse order of seniority that their services will not be required for the 2012-2013 school year because of the reduction or discontinuance of particular kinds of services. Where necessary, that notice shall indicate if less than a full time equivalent position is affected.

DATED: May 14, 2012

DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

ATTACHMENT A

(Respondents; Compton Unified School District; OAH Case No. 2012030749)

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Jamie Ballard
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Pennie Childs
Ciampa Christopher
Elizabeth Clayton-Bennett
Tracy Coleman-Wilson
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Susan Goulding
Christina Gudino
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Correy Heard
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Vanessa Huerta
Ararath Iriarte
Mandy Jepsen
Waverly Johnson

Mandy Lau
Roderick Leak
Yina Lor
Erik Madrigal
Jacqueline Marsh
Angelia Metcalf
Herman Miranda
Sean Munley
LaShawn Oppong
Victor Pacheco
Maria Padilla
Ruth Perry
Carina Piamonte
Amy Razo
Chantal Richmond
Rhonda Robinson-Batiste
Niccolo Rosselli
Daksh Sharma
Catalina Silvestre
Jennifer Siu
Ruffin Swain
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